



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2016-0672; EPA-R05-OAR-2016-0706; EPA-R05-OAR-2016-0708; FRL-9649-02-R5]

**Air Plan Approval; Indiana, Michigan and Minnesota; Revised
Startup, Shutdown, and Malfunction Provisions**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving three State Implementation Plan (SIP) revision requests, submitted by Indiana, Michigan, and Minnesota. All three States submitted the SIP revision requests in 2016 in response to a finding of substantial inadequacy and a SIP call published on June 12, 2015, for specific provisions in each State's SIP related to excess emissions during startup, shutdown, and malfunction (SSM) events. EPA is determining that each submission corrects the State's respective SIP deficiencies as identified in the June 12, 2015, SIP call. EPA proposed to approve this action on May 5, 2022, and received no adverse comments.

DATES: This final rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: EPA has established dockets for this action under Docket ID No. EPA-R05-OAR-2016-0672 (Indiana); EPA-R05-OAR-2016-0706 (Michigan); and EPA-R05-OAR-2016-0708 (Minnesota). All

documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through *www.regulations.gov* or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID-19. We recommend that you telephone Michael Leslie, Environmental Engineer at (312) 353-6680 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Michael Leslie, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-6680, *leslie.michael@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

I. Background Information.

On May 5, 2022 (87 FR 26707), EPA proposed to approve three SIP revision requests submitted in 2016 and supplemented in 2017 by Indiana, Michigan, and Minnesota to address EPA's 2015 SSM

SIP Action. EPA is determining that the three States' rulemaking actions and revised rules are consistent with the SSM requirements for SIP provisions under the CAA; that their respective SIP submissions correct the SSM deficiencies identified for the state within EPA's 2015 SSM SIP Action; and fulfill the obligation to respond to it.

An explanation of the CAA requirements, a detailed analysis of the revisions, and EPA's reasons for proposing approval were provided in the notice of proposed rulemaking and will not be restated here. The public comment period for this proposed rule ended on June 6, 2022. EPA received three supportive comments and no adverse comments on the proposal.

II. Final Action.

EPA is approving three SIP revision requests submitted in 2016 and supplemented in 2017 by Indiana, Michigan, and Minnesota to address EPA's 2015 SSM SIP Action. Specifically, EPA is approving Indiana rules 326 IAC 1-6-1, 326 IAC 1-6-2, 326 IAC 1-6-4, 326 IAC 1-6-5, 326 IAC 1-6-6, and 326 IAC 2-9-1, effective January 29, 2017. EPA is also removing Michigan rule R 339.1916 and Minnesota rule R. 7011.1415 from each State's respective federally enforceable criteria pollutant SIP. EPA has determined that the three States' rulemaking actions and revised rules are consistent with the SSM requirements for SIP provisions under the CAA; that their respective SIP submissions correct the SSM deficiencies identified for the State within EPA's 2015 SSM SIP Action; and fulfill the obligation to respond

to it.

III. Incorporation by Reference.

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Indiana regulations described in Section II of this preamble and set forth in the amendments to 40 CFR part 52 below. EPA has made, and will continue to make, these documents generally available through *www.regulations.gov*, and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.¹

Also in this document, as described in Section II of this preamble and set forth in the amendments to 40 CFR part 52 below, EPA is removing provisions of the EPA-Approved Michigan and Minnesota Regulations from the Michigan and Minnesota SIPs, which are incorporated by reference in accordance with the requirements of 1 CFR part 51.

IV. Statutory and Executive Order Reviews.

¹ 62 FR 27968 (May 22, 1997).

Under the Clean Air Act (CAA), the Administrator is required to approve a SIP submission that complies with the provisions of the and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

This action is subject to the Congressional Review Act, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 8, 2022.

Debra Shore,
Regional Administrator, Region 5.

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. In § 52.770, the table in paragraph (c) is amended by revising the entries for "1-6-1", "1-6-2", "1-6-4", "1-6-5", and "1-6-6" under "Article 1. General Provisions", "Rule 6. Malfunctions", and the entry for "2-9-1" under "Article 2. Permit Review Rules", "Rule 9. Source Specific Operating Agreement Program", to read as follows:

§ 52.770 Identification of plan.

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(c) * * *

EPA-APPROVED INDIANA REGULATIONS

Indiana citation	Subject	Indiana effective Date	EPA approval date	Notes
Article 1. General Provisions				
Rule 1. Provisions Applicable Throughout Title 326				
* * * * *				
Rule 6. Malfunctions				
1-6-1	Applicability	1/29/2017	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
1-6-2	Records; notice of malfunction	1/29/2017	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
* * * * *				
1-6-4	Conditions under which malfunction not considered violation	1/29/2017	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
1-6-5	Excessive malfunctions; department actions	1/29/2017	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	

1-6-6	Malfunction emission reduction program	1/29/2017	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
*	*	*	*	*
Article 2. Permit Review Rules				
*	*	*	*	*
Rule 9. Source Specific Operating Agreement Program				
2-9-1	General provisions	1/29/2017	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
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§ 52.1170 [Amended]

3. In § 52.1170, the table in paragraph (c) is amended by removing the entry for "R 339.1916"

§ 52.1220 [Amended]

4. In § 52.1220, the table in paragraph (c) is amended by removing the entry for "7011.1415".